U.S. v. Gilman

347 U.S. 507, 98 L. Ed. 899, 74 S. Ct. 695 (1954).

A third party complaint by U.S. against Gilman seeking to recover indemnity from Gilman for damages which the U.S. might have to pay to one Hannah who was suing the U.S. under FT CA (60 Stat. 842, 28 USC 1346 (1952)) for damages done him by Gilman when latter hit Hannah in course of duties as gov't car in official business.

Theory of U.S. suit was that it had implied right of indemnity against employee — implied from C.C. theory of an employer's right of indemnity over against his employee.

Held:

1. Indemnification sought would, as could, be burdensome, perhaps so, to employee — both from standpoint of job standing and money.
2. Question of federal fiscal policy raised:
3. p. 511:

"Here a complex of relations between federal agencies and their staffs is involved. Moreover, the claim now asserted, though the present law Congress passed, is a matter in which Congress has not taken a position. It presents question of policy in which Congress has not spoken. The selection of that policy which is most advantageous to the whole

involves a host of considerations that must be weighed and appraised. That function is more appropriately for those who write the laws, rather than for those who interpret them."

In the footnote of the Court's opinion (p. 703 of L. Ed.), certain excerpts are taken from the hearings before the House Committee on the Judiciary on the House bill which eventually became the FTCA. (Hearings Before the House Committee on the Judiciary on HR 5373 and HR 6463, 77th Cong., 2nd Sess., p. 9-10). There are worth quoting —:

"The Chairman. What is the arrangement when the government has an employee who is guilty of gross negligence and injury results? If there any recovery against that the employee should in any way respond to the Government if it has to pay for the injury, in the event of gross negligence?"

"Mr. Shea (Solicitor General of U.S.): Not if he is a Government employee. Under those circumstances, the remedy is against the employee."

"Mr. McLaughlin (Member). No right of subrogation is set up?

"Mr. Shea. Not against the employee."

U.S. v. Standard Oil Co.

332 U.S. 301, 91 L. Ed. 2067 (1947).

U.S. suit by the U.S. to recover for the cost of hospitalizing and paying one of its soldiers who was hit and injured by a truck owned by an employee of the defendant.

Theory of U.S. suit was that U.S. was entitled to damages for impairment of Government-soldier relationship by analogy to C.C. entitlements for damages to husband-wife relationship, parent-child relationship, master-servant relationship, etc.

Denied: (p. 314):

"The ground though the argument is in analogies drawn from that field, the issue comes down to fundamental consequence of a question of federal fiscal policy, coupled with considerations concerning the need for and the effectiveness of means to be used in executing the policy sought to be established. . . . . Whatever the merits of the policy, its enactment into law is a proper subject for congressional action, not for any corrective power of ours. Congress, not this Court or the other federal courts, is the custodian of the national purse. By the same token, it is the prerogative and duty of Congress the exclusive protection of federal fiscal affairs."

Jackson dissented, arguing that the C-L analogy was sound, and pointing out that, in a 1935 case in England, the English govt was held entitled to recover in an almost exactly similar case Atty.-Gen. v. Valle-Jones, 2 KB Eng. 209 (1935).